

Western Australia

Electricity Corporations Amendment Act 2013

As at 18 Dec 2013

No. 25 of 2013

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Electricity Corporations Amendment Act 2013

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Western Australia

Electricity Corporations Amendment Act 2013

No. 25 of 2013

An Act to amend the *Electricity Corporations Act 2005* to provide for the merger of electricity corporations, to consequentially amend other Acts, and for other purposes.

[Assented to 18 December 2013]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Electricity Corporations Amendment Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the heading to Part 2 and sections 3, 32, 33, 34 and 35 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Electricity Corporations Act 2005* amended

3. Act amended

This Part amends the *Electricity Corporations Act 2005*.

4. Long title replaced

Delete the long title and insert:

**An Act to provide for the establishment and operation of
electricity corporations and for related matters.**

5. Section 3 amended

- (1) In section 3(1) delete the definitions of:

Electricity Generation Corporation

Electricity Retail Corporation

- (2) In section 3(1) insert in alphabetical order:

Electricity Generation and Retail Corporation means
the body established by section 4(1)(a) as renamed
under section 4(2A);

6. Section 4 amended

- (1) Delete section 4(1)(c).

- (2) After section 4(1) insert:

(2A) From the time at which the *Electricity Corporations
Amendment Act 2013* section 6 comes into operation,
the corporate name of the body established by
subsection (1)(a) is the Electricity Generation and
Retail Corporation.

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7. Section 5 amended

In section 5 delete “A corporation is not” and insert:

For the purposes of any law of the State, a corporation is to be regarded as not being

Note: The heading to amended section 5 is to read:

Corporations not to be regarded as agents of State for purposes of State laws

8. Section 8 amended

(1) In section 8(1) delete “6,” and insert:

8,

(2) Delete section 8(4) and insert:

(4) In making nominations for appointment to the board of a corporation the Minister is to ensure that each nomination is made only after consultation with the board.

(3) In section 8(6) delete “(a)” (1st occurrence).

9. Section 14 amended

Delete section 14(4).

10. Part 3 Division 1 Subdivision 2 heading amended

In the heading to Part 3 Division 1 Subdivision 2 after “**Generation**” insert:

and Retail

11. Section 35 amended

- (1) In section 35:
- (a) after “Generation” insert:

and Retail
 - (b) after paragraph (c) insert:
 - (da) to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand; and
 - (db) to purchase or otherwise acquire electricity for the purposes of paragraph (da); and
 - (c) in paragraph (e)(ii) delete “corporation;” and insert:

corporation; and
 - (d) after paragraph (e)(ii) insert:
 - (iii) to provide retail support services to that corporation;
 - (e) after paragraph (e) insert:
 - (fa) to provide telecommunications services; and
- (2) In section 35 after each of paragraphs (a), (b), (c) and (d) insert:
- and

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12. Section 36 amended

In section 36(a) delete “function under section 35(e)(i),” and insert:

functions under section 35(e)(i) and (iii),

13. Section 37 amended

(1) After section 37(2) insert:

(3A) Subsection (1) does not apply to the performance of the corporation’s functions under section 35(b) to acquire and transport gas.

(3B) Subsection (1) does not apply to the performance of the corporation’s function under section 35(b) to supply gas so far as the performance involves only the supply of gas to the Regional Power Corporation.

(2) After section 37(4) insert:

(5) Regulations may be made authorising the corporation to perform one or more of its functions under section 35 (including functions referred to in subsections (2), (3A), (3B) and (3)) in a part or parts of the State not served by the South West interconnected system.

(6) Regulations referred to in subsection (5) are in addition to and do not affect subsections (2), (3A), (3B) and (3) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with any of those subsections.

14. Sections 38 to 40 replaced

Delete sections 38, 39 and 40 and insert:

38. Wholesale acquisition or supply of electricity

- (1) Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements (*wholesale arrangements*) providing for and in relation to —
 - (a) the wholesale acquisition or supply of electricity by the corporation; and
 - (b) the acquisition or supply by the corporation of goods and services relating to the wholesale acquisition or supply of electricity (*wholesale products*).
- (2) Without limiting subsection (1), wholesale arrangements may be in the form of rules or a code.
- (3) Wholesale arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.
- (4) The *Interpretation Act 1984* sections 43 (other than subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76 and Part VIII apply to wholesale arrangements as if they were subsidiary legislation.
- (5) Regulations referred to in subsection (1) may —
 - (a) set out the process for the approval, amendment and repeal of wholesale arrangements; and
 - (b) provide for the publication, commencement, and laying before each House of Parliament, of wholesale arrangements and instruments amending or repealing them.

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- (6) If there is a conflict or inconsistency between a provision of regulations referred to in subsection (1) and a provision of wholesale arrangements, the provision of the regulations prevails.

39. Matters for regulations or wholesale arrangements

- (1) In this section —

approved instrument means an instrument referred to in subsection (2)(b) that is approved under the regulations or wholesale arrangements;

specified means specified in the regulations or wholesale arrangements;

terms and conditions includes pricing and pricing methodology;

wholesale arrangements has the meaning given in section 38(1);

wholesale products has the meaning given in section 38(1)(b).

- (2) Regulations referred to in section 38(1), or wholesale arrangements, may —

- (a) set out requirements to be complied with, or standards or principles to be observed, by the corporation in relation to —

- (i) the wholesale acquisition or supply of electricity by the corporation; or
(ii) the acquisition or supply of wholesale products by the corporation;

and

- (b) without limiting paragraph (a), require the corporation to lodge with a specified person an instrument setting out the terms and conditions that are to apply to —

- (i) the wholesale acquisition or supply by the corporation of a specified amount of

- electricity or an amount of electricity determined in a specified manner; or
 - (ii) the acquisition or supply by the corporation of specified wholesale products or wholesale products of a specified class;
- and
- (c) set out the process for the approval of an instrument referred to in paragraph (b), including the matters to be taken into account when deciding whether to give approval; and
 - (d) set out the process for the amendment or replacement of an approved instrument; and
 - (e) impose obligations on the corporation, including an obligation to give an undertaking to a specified person in respect of a specified matter or class of matter; and
 - (f) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and
 - (g) provide for the rights of persons to be supplied with electricity or wholesale products —
 - (i) in accordance with requirements, standards or principles set out in the regulations or wholesale arrangements; or
 - (ii) on terms and conditions set out in an approved instrument;
- and
- (h) provide for matters of an incidental or supplementary nature.

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- (3) Regulations referred to in section 38(1) may —
- (a) provide that a provision of the regulations or wholesale arrangements that —
 - (i) imposes an obligation on the corporation; and
 - (ii) is specified in the regulations or of a class specified in the regulations,is a civil penalty provision for the purposes of the regulations; and
 - (b) prescribe, for a contravention of a civil penalty provision —
 - (i) an amount not exceeding \$100 000; and
 - (ii) in addition a daily amount not exceeding \$20 000,that may, in accordance with the regulations, be demanded from or imposed upon the corporation; and
 - (c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and
 - (d) provide for and regulate the taking of proceedings in respect of alleged contraventions by the corporation of provisions of the regulations or wholesale arrangements, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and
 - (e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and
 - (f) provide for the review by a specified person of decisions made under the regulations or wholesale arrangements.

- (4) In subsection (3)(b)(ii) —
daily amount means an amount for each day or part of a day during which the contravention continues.
- (5) If wholesale arrangements confer functions on a person —
 - (a) the functions are to be taken to be conferred by this Act; and
 - (b) the person is authorised to perform the functions.

40. Disclosure of information to fines Registrar

- (1) The corporation must disclose to the Registrar appointed under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the names and addresses of the persons who are supplied electricity or gas by the corporation, but not photographs or signatures of such persons.
- (2) Information disclosed under subsection (1) may be used in the performance of the Registrar's functions under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* but not for any other purpose.
- (3) The disclosure of information under subsection (1) is to be free of charge.

15. Section 41 amended

In section 41(g) delete “Corporation, the Electricity” and insert:

and

16. Section 43 amended

After section 43(2) insert:

- (3) Regulations may be made authorising the corporation to perform one or more of its functions under section 41 (including functions referred to in subsection (2)) in a part or parts of the State not served by the South West interconnected system.
- (4) Regulations referred to in subsection (3) are in addition to and do not affect subsection (2) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with that subsection.

17. Part 3 Division 1 Subdivision 4 deleted

Delete Part 3 Division 1 Subdivision 4.

18. Section 50 amended

(1) In section 50:

- (a) in paragraph (d) after “Electricity” insert:

Generation and

- (b) in paragraph (d) delete “44(a);” and insert:

35(da); and

- (c) in paragraph (h) after “Generation” insert:

and Retail

- (2) In section 50 after each of paragraphs (a) to (c) and (e) to (h) insert:

and

19. Section 52 amended

After section 52(2) insert:

- (3) Subsections (1) and (2) do not apply to the performance of the corporation's functions of acquiring, transporting and supplying gas so far as the performance involves only either or both of the following —
- (a) the acquisition and transport of gas from the Electricity Generation and Retail Corporation;
 - (b) the supply and transport of gas to the Electricity Generation and Retail Corporation.
- (4) Regulations may be made authorising the corporation —
- (a) to perform one or more of the functions referred to in subsection (1) in respect of electricity systems in a part or parts of the State outside the area of operations; and
 - (b) to perform one or more of the functions referred to in subsection (2) in a part or parts of the State outside the area of operations.
- (5) Regulations referred to in subsection (4) are in addition to and do not affect subsection (3) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with that subsection.

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20. Section 54 amended

In section 54(2) after “Electricity” (2nd and 3rd occurrences) insert:

Generation and

21. Section 59 amended

In section 59(3)(j) delete “42(b), 45(b)” and insert:

42(b)

22. Section 62 replaced

Delete section 62 and insert:

62. Segregation of functions

- (1) Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements (*segregation arrangements*) providing for and in relation to —
 - (a) the division of the functions or operations of a corporation into segments; and
 - (b) the segregation of any such segment of a corporation from the other functions or operations of the corporation; and
 - (c) the segregation from a corporation of any subsidiary of the corporation that has any functions or operations of a specified kind.
- (2) Without limiting subsection (1), segregation arrangements may be in the form of rules or a code.

- (3) Segregation arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.
- (4) The *Interpretation Act 1984* sections 43 (other than subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76 and Part VIII apply to segregation arrangements as if they were subsidiary legislation.
- (5) Regulations referred to in subsection (1) may —
 - (a) set out the process for the approval, amendment and repeal of segregation arrangements; and
 - (b) provide for the publication, commencement, and laying before each House of Parliament, of segregation arrangements and instruments amending or repealing them.
- (6) If there is a conflict or inconsistency between a provision of regulations referred to in subsection (1) and a provision of segregation arrangements, the provision of the regulations prevails.

63A. Matters for regulations or segregation arrangements

- (1) In this section —

segregation arrangements has the meaning given in section 62(1);

specified means specified in the regulations or segregation arrangements.
- (2) Regulations referred to in section 62(1), or segregation arrangements, may —
 - (a) set out requirements to be complied with, or standards or principles to be observed, by a corporation in relation to dealings between one segment of the corporation and another

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- segment of the corporation in respect of a specified matter or class of matter; and
- (b) provide for the keeping of accounts and records; and
 - (c) provide for financial reporting and performance reporting; and
 - (d) provide for the apportionment of income, expenditure, assets and liabilities; and
 - (e) provide for the protection of information; and
 - (f) provide for controls and procedures to ensure that any required segregation is effective; and
 - (g) impose obligations on a corporation, including an obligation to give an undertaking to a specified person in respect of a specified matter or class of matter; and
 - (h) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and
 - (i) provide for matters of an incidental or supplementary nature.
- (3) Regulations referred to in section 62(1) may —
- (a) provide that a provision of the regulations or segregation arrangements that —
 - (i) imposes an obligation on a corporation; and
 - (ii) is specified in the regulations or of a class specified in the regulations,is a civil penalty provision for the purposes of the regulations; and
 - (b) prescribe, for a contravention of a civil penalty provision —
 - (i) an amount not exceeding \$100 000; and

- (ii) in addition a daily amount not exceeding \$20 000,
that may, in accordance with the regulations, be demanded from or imposed upon a corporation;
and
 - (c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and
 - (d) provide for and regulate the taking of proceedings in respect of alleged contraventions by a corporation of provisions of the regulations or segregation arrangements, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and
 - (e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and
 - (f) provide for the review by a specified person of decisions made under the regulations or segregation arrangements.
- (4) In subsection (3)(b)(ii) —
daily amount means an amount for each day or part of a day during which the contravention continues.
- (5) If segregation arrangements confer functions on a person —
- (a) the functions are to be taken to be conferred by this Act; and
 - (b) the person is authorised to perform the functions.

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23. Part 3 Division 2 deleted

Delete Part 3 Division 2.

24. Section 75 amended

In section 75(1) delete “*Trade Practices Act 1974* of the Commonwealth” and insert:

Competition and Consumer Act 2010 (Commonwealth)

25. Section 81 amended

In section 81:

(a) in paragraph (b) delete “them.” and insert:

them; and

(b) after paragraph (b) insert:

(c) facilitate the economically efficient performance of their functions under this Act.

26. Section 83 amended

In section 83(1) delete “81(a) or (b).” and insert:

81(a), (b) or (c).

27. Section 87 amended

In section 87 delete “*Trade Practices Act 1974* of the Commonwealth” and insert:

Competition and Consumer Act 2010 (Commonwealth)

28. Section 106 amended

- (1) In section 106(2)(b) delete “prescribed by regulations made for the purposes of section 62.” and insert:

required under regulations or segregation arrangements referred to in section 62(1).

- (2) In section 106(5)(b) delete “made for the purposes of section 62.” and insert:

and segregation arrangements referred to in section 62(1).

29. Section 107 amended

In section 107(1)(a)(ii) delete “prescribed by regulations made for the purposes of section 62;” and insert:

required under regulations or segregation arrangements referred to in section 62(1);

30. Section 108 amended

- (1) In section 108(1)(c) delete “ made for the purposes of section 62;” and insert:

and segregation arrangements referred to in section 62(1); and

- (2) In section 108(1) after each of paragraphs (a) and (b) insert:

and

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31. Section 114 amended

- (1) In section 114(1) in the definition of *corporation* delete “Corporation or the Electricity” and insert:

and

- (2) In section 114(2) delete “35(b) or 44(f), by instrument served on a” and insert:

35(b), by instrument served on the

32. Section 120 amended

In section 120(1)(b) delete “119(4) or 126(3).” and insert:

119(4), 126(3) or 198(1).

33. Section 134 amended

In section 134(1)(a) after “146 or” insert:

199 or

34. Section 140 amended

In section 140(2) delete “Act.” and insert:

Act or the *Electricity Corporations Amendment Act 2013*.

35. Part 10 inserted

After section 192 insert:

Part 10 — Provisions for merger of corporations

Division 1 — Preliminary

193. Purpose of Part

The purpose of this Part is to provide for the merger of the Electricity Retail Corporation with the body established by section 4(1)(a), and for related transitional matters.

194. Terms used

In this Part —

amending Act means the *Electricity Corporations Amendment Act 2013*;

asset means property of any kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) a chose in action;
- (b) goodwill;
- (c) a right, interest or claim of any kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

continuing corporation means the body established by section 4(1)(a);

EGRC means the continuing corporation as renamed as the Electricity Generation and Retail Corporation under section 4(2A);

Government agreement has the meaning given in the *Government Agreements Act 1979* section 2;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person;

merger means —

- (a) the actions effected by the coming into operation of section 6 of the amending Act; and
- (b) the merging of the Electricity Retail Corporation into the EGRC under section 196(1);

merger provisions means the following —

- (a) section 6 of the amending Act;
- (b) this Part;
- (c) transitional regulations;

merger time means the time at which section 6 of the amending Act comes into operation;

merging corporation means the Electricity Retail Corporation;

right means any right, power, privilege or immunity whether actual, contingent or prospective;

transitional regulations has the meaning given in section 221.

195. Saving

- (1) The operation of any of the merger provisions is not to be regarded —
 - (a) as a breach of contract or confidence or otherwise as a civil wrong; or

- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
 - (c) as giving rise to any right to damages or compensation; or
 - (d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (e) as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) as releasing or allowing the release of any surety.
- (2) The merger provisions are additional to any relevant provisions of the *Interpretation Act 1984*.

Division 2 — Merger

196. Merger of corporations

- (1) At the merger time the Electricity Retail Corporation ceases to be a corporation under this Act and merges into the EGRC.
- (2) From the merger time the EGRC is a continuation of the merging corporation.

197. Corporations to implement or facilitate merger

- (1) A corporation is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.

- (2) Subsection (1) applies —
 - (a) before the merger time — to the merging corporation and the continuing corporation; and
 - (b) after the merger time — to the EGRC.
- (3) The function conferred by subsection (1) is in addition to any other function that a corporation has.

Division 3 — Directions by Minister

198. Minister may give directions

- (1) The Minister may give directions in writing to the continuing corporation or the merging corporation requiring it to take any step that the Minister considers necessary or convenient for achieving the purpose of this Part.
- (2) The reference in subsection (1) to the taking of any step includes refraining from taking any step that the corporation might otherwise take.
- (3) A corporation is to give effect to a direction given to it under subsection (1) despite any other provision of this Act.
- (4) This section has effect despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a).

199. Directions to be laid before Parliament

The Minister must, within 14 days after a direction is given under section 198(1), cause the text of the direction to be laid before each House of Parliament or dealt with under section 134.

Division 4 — Devolution of assets, rights, liabilities and proceedings and related provisions

200. Assets, rights and liabilities

- (1) At the merger time —
 - (a) the assets and rights of the merging corporation that were immediately before that time vested in the merging corporation vest in the EGRC by force of this subsection; and
 - (b) the liabilities of the merging corporation immediately before that time become the liabilities of the EGRC by force of this subsection.
- (2) In determining the profits of the EGRC for the purposes of section 126, assets that vest in the EGRC by force of subsection (1) are not to be regarded as income.

201. Proceedings and remedies

From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by, or available against or to, the merging corporation may be brought or continued by, and are or is available against or to, the EGRC.

202. Continuation of guarantees

- (1) This section applies to —
 - (a) a guarantee given under section 130; and
 - (b) a guarantee continued in force by section 173,that was in force immediately before the merger time in respect of the merging corporation.

- (2) A guarantee to which this section applies continues in force and is to be read and construed, from the merger time, as if it were a guarantee in respect of the EGRC.
- (3) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee to which this section applies.
- (4) By virtue of this subsection, any sum paid by the Treasurer under a guarantee to which this section applies in respect of the EGRC constitutes a charge on the assets of that corporation.

203. Joint tenancies preserved

- (1) This section applies to an asset held by the merging corporation as a joint tenant with another person.
- (2) The vesting of an asset to which this section applies in the EGRC under this Part does not sever the joint tenancy, and the EGRC holds the asset as a joint tenant with the other person.

204. Exemption from State taxation

- (1) In this section —
State tax includes duty under the *Duties Act 2008* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by the operation of the merger provisions; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to the merger provisions, or for a purpose connected with or arising out of giving effect to the merger provisions.

- (3) The Treasurer or a person authorised by the Treasurer may, at the request of the EGRC, certify in writing that a specified thing —
 - (a) occurred by the operation of the merger provisions; or
 - (b) was done under this Part, or to give effect to the merger provisions, or for a purpose connected with or arising out of giving effect to the merger provisions.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

205. Registration of documents

- (1) In this section —
relevant officials means —
 - (a) the Registrar of Titles under the *Transfer of Land Act 1893*; and
 - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; and
 - (c) the Minister administering the *Land Administration Act 1997*; and
 - (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.
- (2) The relevant officials are to take notice of the merger provisions and are empowered to record and register in the appropriate manner the documents necessary to show the effect of those provisions.

- (3) Without limiting subsection (2), a statement in an instrument is evidence of the facts stated if —
 - (a) the instrument is executed by the EGRC; and
 - (b) the statement is to the effect that any estate or interest in land or other property has become vested in the EGRC under section 200(1).

Division 5 — Staff

206. Members of staff

- (1) At the merger time, a person who immediately before the merger time was a member of staff of the merging corporation becomes a member of staff of the EGRC.
- (2) The operation of subsection (1) does not constitute a retrenchment or redundancy.

207. Preservation of rights

- (1) Except as otherwise agreed by the relevant member of staff, the operation of section 206 (1) does not —
 - (a) affect his or her remuneration and other terms and conditions of employment; or
 - (b) prejudice his or her existing or accruing rights; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt continuity of service.
- (2) For the purposes of subsection (1)(d), the service of a member of staff with the merging corporation is to be taken to have been with the EGRC.
- (3) Nothing in section 206 or this section prevents the exercise by the EGRC of its powers in relation to the management of members of staff.

Division 6 — Other provisions

208. Renaming of continuing corporation does not affect status

The renaming of the continuing corporation as the Electricity Generation and Retail Corporation under section 4(2A) does not affect its continuity or legal status.

209. Compliance with policy instruments

Despite section 58, the EGRC is not required to perform its functions in accordance with its strategic development plan and its statement of corporate intent in the period starting at the merger time and ending on the next 30 June.

210. Financial reporting: merging corporation

(1) In this section —

annual reporting provisions means sections 107 and 108, Schedule 4 Division 3 Subdivision 1 and Schedule 4 clauses 32 and 33;

quarter means a quarter of a financial year.

(2) It is a function of the EGRC to perform the duties set out in this section in respect of the merging corporation.

(3) If the merger time coincides with the end of a quarter of the merging corporation, the EGRC is to comply with section 106 in respect of the merging corporation for that quarter.

(4) If the merger time is after the end of a quarter of the merging corporation (the *last quarter*), the EGRC is to —

(a) comply with section 106 in respect of the merging corporation to the extent that that

section has not been complied with for the last quarter; and

- (b) comply with section 106 in respect of the merging corporation for the period starting at the end of the last quarter and ending at the merger time as if that period were a quarter.
- (5) If the merger time coincides with the end of a financial year of the merging corporation, the EGRC is to comply with the annual reporting provisions in respect of the merging corporation for that financial year.
- (6) If the merger time is after the end of a financial year of the merging corporation (the *last financial year*), the EGRC is to —
- (a) comply with the annual reporting provisions in respect of the merging corporation to the extent that those provisions have not been complied with for the last financial year; and
 - (b) comply with the annual reporting provisions in respect of the merging corporation for the period starting at the end of the last financial year and ending at the merger time as if that period were a financial year.
- (7) In order to enable the EGRC to perform its duties under this section, section 106 and the annual reporting provisions apply with —
- (a) any modifications prescribed by transitional regulations; and
 - (b) any other appropriate modifications.

211. Financial reporting: continuing corporation

- (1) In this section —
- annual reporting provisions* has the meaning given in section 210(1).

- (2) If the merger time is after the end of a financial year of the continuing corporation (the *last financial year*), the EGRC is to comply with the annual reporting provisions in respect of the continuing corporation as if each of the following periods were a financial year —
 - (a) the period starting at the end of the last financial year and ending at the merger time;
 - (b) the period starting at the merger time and ending on the next 30 June.
- (3) For the purposes of subsection (2), the annual reporting provisions apply with —
 - (a) any modifications prescribed by transitional regulations; and
 - (b) any other appropriate modifications.

212. Continuation of certain directions

- (1) A direction under section 111(1) that was in force in respect of the merging corporation immediately before the merger time continues in force, from the merger time, as if it were a direction given under section 111(1) to the EGRC.
- (2) An instrument under section 114(2) that was in force in respect of the merging corporation immediately before the merger time continues in force, from the merger time, as if it were an instrument served under section 114(2) on the EGRC.

213. Amount in lieu of rates

- (1) If immediately before the merger time the merging corporation has not paid an amount required to be paid under section 124, the EGRC is to pay the amount to the Treasurer.

- (2) Any amount that has to be paid to the Treasurer in accordance with subsection (1) is to be paid from the funds of the EGRC.

214. Dividends

- (1) In this section —
dividend function means a function of a corporation or its board under section 126.
- (2) If immediately before the merger time a dividend function has yet to be performed by the merging corporation or its board, the EGRC or its board is to perform the function after the merger time as if the EGRC were the merging corporation.
- (3) Any amount that has to be paid to the Treasurer in accordance with subsection (2) is to be paid from the funds of the EGRC.

215. Completion of things commenced

Anything commenced to be done by the merging corporation before the merger time may be continued by the EGRC.

216. Continuing effect of things done

- (1) In this section —
relevant act means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of the merging corporation.
- (2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the EGRC so far as the act, matter or thing is relevant to the EGRC.

- (3) This section does not affect the operation of any other provision of this Part.

217. Immunity to continue

If the merging corporation had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, the immunity continues in that respect for the benefit of the EGRC.

218. Agreements, instruments and documents

- (1) In this section —

agreement includes a Government agreement;

former name means “Electricity Generation Corporation”;

new name means “Electricity Generation and Retail Corporation”.

- (2) An agreement, instrument or document subsisting immediately before the merger time that contains —
- (a) a reference to the merging corporation or to the continuing corporation by its former name; or
 - (b) a reference to a body that under Part 9 is to be read as, or has effect as if it were, a reference to the merging corporation or the continuing corporation,

has effect from the merger time as if the reference were, unless the context otherwise requires, a reference to the continuing corporation by its new name.

219. Treasurer may give indemnity and guarantee

- (1) In this section —

liability includes civil liability under the *Corporations Act 2001* (Commonwealth);

relevant person means a person who is or has been a director, the chief executive officer, or a member of staff, of the merging corporation.

- (2) The Treasurer may, in the name and on behalf of the State, give to a relevant person an indemnity against liability or a guarantee of payment in respect of —
 - (a) the doing of anything, whether before or after the merger time, that is required to achieve the purpose of this Part; or
 - (b) an omission to do anything, whether before or after the merger time, if the omission is required to achieve the purpose of this Part.
- (3) The payment of any money under an indemnity or guarantee given under this section is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

220. Government agreements not affected

The merger provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.

221. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
 - (a) things to be done by the merging corporation or the continuing corporation to provide for, implement or facilitate the merger; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.

- (2) Transitional regulations may provide that specific provisions of any written law —
 - (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.
- (4) If transitional regulations contain a provision referred to in subsection (3), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State, an authority of the State or the EGRC) the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State, an authority of the State or the EGRC) in respect of anything done or omitted to be done before the day of publication of those regulations.

36. Schedule 1 clause 6 amended

Delete Schedule 1 clause 6(5)(a) and insert:

- (a) a number of directors equal to at least half the number of directors in office constitutes a quorum; and

Part 3 — Other Acts amended

37. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3:
 - (a) in the item relating to the Electricity Generation Corporation after “Generation” insert:

and Retail
 - (b) delete the item relating to the Electricity Retail Corporation.

38. *Economic Regulation Authority Act 2003* amended

- (1) This section amends the *Economic Regulation Authority Act 2003*.
- (2) In section 20(5) in the definition of ***relevant entity*** delete paragraph (c) and insert:
 - (c) a body established by the *Electricity Corporations Act 2005* section 4(1).

39. *Electricity Industry Act 2004* amended

- (1) This section amends the *Electricity Industry Act 2004*.
- (2) In section 3 delete the definitions of:
electricity corporation
Electricity Generation Corporation
Electricity Retail Corporation

- (3) In section 3 insert in alphabetical order:

electricity corporation means —

- (a) the Electricity Generation and Retail Corporation; or
- (b) the Electricity Networks Corporation; or
- (c) the Regional Power Corporation;

Electricity Generation and Retail Corporation has the meaning given in the *Electricity Corporations Act 2005* section 3(1);

- (4) In section 54A(1) in the definition of *corporation* after “Electricity” insert:

Generation and

- (5) In section 71(4)(a) after “Electricity” insert:

Generation and

40. *Energy Arbitration and Review Act 1998* amended

- (1) This section amends the *Energy Arbitration and Review Act 1998*.
- (2) Delete section 50(2A) and insert:

- (2A) The Board has the functions conferred on it under the *Electricity Industry Act 2004*, the *Gas Services Information Act 2012* or any other written law.

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- (3) In section 80(5) delete the definition of *electricity corporation* and insert:

electricity corporation means a body established by the *Electricity Corporations Act 2005* section 4(1).

41. *Energy Operators (Powers) Act 1979* amended

- (1) This section amends the *Energy Operators (Powers) Act 1979*.
- (2) In section 4(1) delete the definition of *electricity corporation* and insert:

electricity corporation means a body established by the *Electricity Corporations Act 2005* section 4(1);

42. *Equal Opportunity Act 1984* amended

- (1) This section amends the *Equal Opportunity Act 1984*.
- (2) Delete section 139(1)(c) and insert:

(c) each of the bodies established by the *Electricity Corporations Act 2005* section 4(1); and

43. *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

- (1) This section amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) In section 3(1) delete the definition of *Electricity Retail Corporation*.

- (3) In section 3(1) insert in alphabetical order:

Electricity Generation and Retail Corporation has the meaning given in the *Electricity Corporations Act 2005* section 3(1);

- (4) In section 5(4)(b) after “Electricity” insert:

Generation and

- (5) In section 10(b) after “Electricity” insert:

Generation and

Note: The heading to amended section 10 is to read:

**Registrar has access to records of Director General and
Electricity Generation and Retail Corporation**

44. *Public Sector Management Act 1994* amended

- (1) This section amends the *Public Sector Management Act 1994*.

- (2) Delete Schedule 1 item 21 and insert:

21 A body established by the *Electricity Corporations Act 2005* section 4(1)

45. *Public Works Act 1902* amended

- (1) This section amends the *Public Works Act 1902*.

- (2) Delete section 5B(1)(c) and insert:

(c) in the case of the Minister of the Crown referred to in section 5A(d), to a body

established by the *Electricity Corporations Act 2005* section 4(1) or to an officer of such a body; or

46. *State Records Act 2000* amended

- (1) This section amends the *State Records Act 2000*.
- (2) Delete Schedule 3 item 1 and insert:
 1. A body established by the *Electricity Corporations Act 2005* section 4(1).

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